

The *Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (the Guidelines)* outline practices and procedures that protect the rights of all employees and contractors in relation to whether or not they join a union - this is called freedom of association.

What does freedom of association mean?

- A person has a right to choose to be or not to be a member of a union.
- A person is not required to be a member of a particular union to work on a site.
- An employer also has the right to choose whether to join an employer association.
- Contractors are not required to have a particular enterprise agreement to work on a site.

Industrial activities

The *Fair Work Act 2009* provides protection for people who engage in lawful industrial activities or choose not to engage in lawful or unlawful industrial activities. It is unlawful to take or threaten adverse action against a person for:

- being or not being a member of a union or employer association
- not engaging in industrial action
- choosing to be represented by a union.

What is 'adverse action'?

Examples of what may be considered to be 'adverse action' includes dismissal of an employee, prejudicing an employee or independent contractor, terminating a contract with an independent contractor, refusing to engage an independent contractor, or organising industrial action against another person.

Guidelines

The Guidelines require contractors to adopt policies that promote freedom of association. Practices which do not promote freedom of association are inconsistent with the Guidelines. Section 10 of the Guidelines provides an extensive list of examples of such practices, including an employer's refusal to employ a person because of their union status, and the requirement that a subcontractor hire a person nominated by a union.

The principal contractor must ensure that the contractors on their site accept, endorse and promote the freedom of association practices and procedures outlined in the Guidelines and, where applicable, the principal contractor's Workplace Relations Management Plan (**WRMP**) for the project.

Workplace Relations Management Plan

Part J of the *Model Workplace Relations Management Plan* requires a tenderer to explain how it will comply with the freedom of association objectives of the Guidelines in a holistic and integrated manner. Appendix 2 of the *Model Workplace Relations Management Plan* provides a summary of freedom of association objectives and prohibitions.

Please see the *Model Workplace Relations Management Plan* and the Construction Compliance Unit's fact sheet on the WRMP for further information.

Reporting obligations

Section 3.2 of the Guidelines provides that any alleged breach of the Guidelines must be reported to the Construction Compliance Unit (CCU) within 24 hours of the alleged breach. This includes breaches of freedom of association requirements. Reports under the Guidelines should be made via the CCU mailbox:

ccu@industrialrelations.nsw.gov.au.

In addition, positive obligations about reporting requirements are set out in Part 6 of the *Model Tender and Contract Documentation*, which comprises a compliance schedule for inclusion in tender contracts for works valued over \$25,000 - see section 1.8.

The *Model Tender and Contract Documentation* is available on the NSW Industrial Relations website.

For further information

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